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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BEISNER, WILLIAM H

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

09/02/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Continuation of Disposition of Claims: Claims pending in the application are 1-
3,5,11,12,17,18,25,38,39,43,44,46,47,51,55,58,64,73,74,81,82,88,93,94,98,100,120,123,126,135,136,138,145,146,152,157,
169,170 and 176.

Continuation of Disposition of Claims: Claims subject to restriction and/or election requirement are 1-
3,5,11,12,17,18,25,38,39,43,44,46,47,51,55,58,64,73,74,81,82,88,93,94,98,100,120,123,126,135,136,138,145,146,152,157,
169,170 and 176.

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-3, 5, 11, 12, 17, 18, 25, 38, 39, 43, 44, 46, 47, 51, 55, 58, 64, 73, 74, 81 and 82, drawn to a multiwell plate.

Group II, claim(s) 88, 93, 94, 98 , 100, 120, 123 and 126, drawn to a method of making a multiwell plate.

Group III, claim(s) 135, 136, 138, 145, 146 and 152, drawn to a matrix of living cells.

Group IV, claim(s) 157, drawn to a method of using a matrix of living cells.

Group V, claim(s) 169, 170 and 176, drawn to a method of using a multiwell plate.

2. The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

3. With respect to Groups I, II and V, Groups I, II and V each include the common technical features expressed in claim 1. However, the technical features of claim 1 do not constitute a special technical feature because they are not a contribution over the prior art. US Patent Publication 2003/0036188 shows multiwell plate with picowells as set forth in claim 1.

Art Unit: 1797

4. With respect to Groups I, III and IV, the special technical feature of Group I which includes picowells is not required of the device of Group III and method of Group IV; and the cell matrix feature required of the device and method of Groups III and IV is not required of the device of Group I.

5. With respect to Groups II, III and IV, the special technical feature of Group II which includes picowells is not required of the device of Group III and method of Group IV; and the cell matrix feature required of the device and method of Groups III and IV is not required of the device of Group II.

6. With respect to Groups III and IV, Groups III and IV each include the common technical features expressed in claim 135. However, the technical features of claim 135 do not constitute a special technical feature because they are not a contribution over the prior art. US Patent Publication 2003/0036188 shows a device including cells supported on a non-fluid matrix as set forth in claim 135.

7. With respect to Groups III and V, the special technical feature of Group V which includes picowells is not required of the device of Group III; and the cell matrix feature required of the device and method of Groups III is not required of the device of Group V.

8. With respect to Groups IV and V, the special technical feature of Group V which includes picowells is not required of the device of Group IV; and the cell matrix feature required of the device and method of Groups IV is not required of the device of Group V.

If Group II is elected, the following election of species is required:

Art Unit: 1797

9. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- i) making a well plate using a template with negative features;
- ii) making a well plate using a photoresist material; and
- iii) making a well plate using a picowell-bearing component

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise require all the limitations of an allowed generic claim. Currently, the following claim(s) are generic: NONE

REQUIREMENT FOR UNITY OF INVENTION

As provided in 37 CFR 1.475(a), a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (“requirement of unity of invention”). Where a group of inventions is claimed in a national stage application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression “special technical features” shall mean those technical features

Art Unit: 1797

that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim. See 37 CFR 1.475(e).

WHEN CLAIMS ARE DIRECTED TO MULTIPLE CATEGORIES OF INVENTIONS

As provided in 37 CFR 1.475(b), a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) A product and process of use of said product; or
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

Otherwise, unity of invention might not be present. See 37 CFR 1.475(c).

Art Unit: 1797

10. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention or species.

Should applicant traverse on the ground that the inventions have unity of invention (37 CFR 1.475(a)), applicant must provide reasons in support thereof. Applicant may submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. Where such evidence or admission is provided by applicant, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

11. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

Art Unit: 1797

application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

12. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained.

Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Art Unit: 1797

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM H. BEISNER whose telephone number is (571)272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael A. Marcheschi, can be reached on 571-272-1374. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/William H. Beisner/
Primary Examiner
Art Unit 1797**

WHB